

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

DECISION AND ORDER

v.

18-CR-6044 EAW

JOSHUA VANDEGRIFT,

Defendant.

By indictment returned May 1, 2018, Defendant Joshua Vandegrift (“Defendant”) stands charged with three counts of production and attempted production of child pornography, one count of enticement and attempted enticement of a minor, one count of receipt and attempted receipt of child pornography, one count of possession and attempted possession of child pornography, and one count of transfer of obscene matter to a minor. (Dkt. 37). Also on May 1, 2018, this Court referred the instant matter to United States Magistrate Judge Marian W. Payson, pursuant to 28 U.S.C. § 636(b), for the conduct of all pre-trial matters. (Dkt. 38).

On July 12, 2018, counsel for Defendant filed a motion for a hearing to determine Defendant’s mental competency pursuant to 18 U.S.C. § 4241(a). (Dkt. 50). Defense counsel supplemented this motion on August 31, 2018. (Dkt. 55). On September 4, 2018, Judge Payson issued an Order finding reasonable cause to believe that Defendant “may presently be suffering from a mental disease or defect to the extent that he is unable to understand the nature and consequences of the proceedings against him and to assist

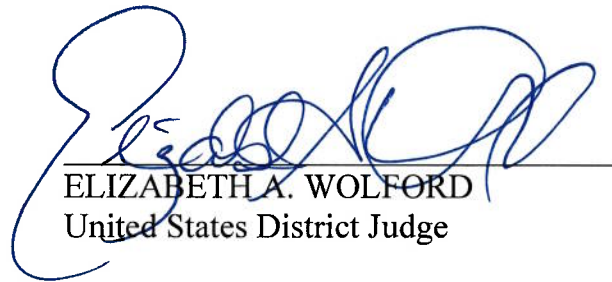
properly in his defense” and ordering, pursuant to 18 U.S.C. § 4241(b), that Defendant undergo a psychiatric or psychological examination. (Dkt. 56 at 2-3).

A psychiatric report opining that Defendant is currently competent to stand trial was subsequently provided to the Court. (Dkt. 60). On December 3, 2018, Judge Payson held a conference at which both the defense and the government requested that the findings set forth in the psychiatric report be adopted and that Defendant be found competent to stand trial. (Dkt. 61).

Also on December 3, 2018, Judge Payson issued a Report and Recommendation (the “R&R”) recommending that the undersigned find Defendant competent to stand trial. (Dkt. 62). No objections to the R&R were filed, and the time for filing any such objections has passed.

“The district court may adopt those portions of a report and recommendation to which no objections have been made, as long as no clear error is apparent from the face of the record.” *United States v. Preston*, 635 F. Supp. 2d 267, 269 (W.D.N.Y. 2009). Having reviewed the record, the Court finds no error, clear or otherwise, in the R&R. Accordingly, pursuant to 28 U.S.C. § 636(b), Magistrate Judge Payson’s Report and Recommendation (Dkt. 62) is adopted in its entirety, and the Court hereby finds by a preponderance of the evidence that Defendant is not presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, and that he is competent to stand trial.

SO ORDERED.



ELIZABETH A. WOLFORD
United States District Judge

Dated: December 18, 2018
Rochester, New York